

Part-time employee: Beware of “express” reclassification as a full-time contract

When a part-time employee exceptionally works more than 35 hours in a week, his/her contract must be reclassified as a full-time contract, even if the number of working hours provided for in his/her contract is fixed on a monthly basis.

For the first time, to our knowledge, the *Cour de Cassation* (French Supreme Court) has clarified what is meant by the notion of statutory working time duration for a part-time employee whose working hours are set on a monthly basis.

In the case at hand, an employee was hired on a part-time basis for 50 working hours per month. Having worked 36.75 hours during the first week of the month, he brought an action before the Labor Court to have his part-time employment contract reclassified as a full-time contract, effective as from that particular month.

The Court of Appeals rejected the employee’s request on the grounds that, since the employee’s working hours were set on a monthly basis, the fact that he worked more than the statutory weekly working time duration (35 hours) during one week could not lead to the reclassification of the part-time employment contract as a full-time one.

The *Cour de Cassation* did not follow the reasoning of the trial judges and considered that insofar as an employee works at least 35 hours during a week, even if he/she does not exceed the monthly working hours set in his/her employment contract (50 hours in the case at hand), his/her part-time employment contract must be reclassified as a full-time one^[1]. The legal 35-hour limit must not be reached in the course of a week. The 35-hour limit per week cannot, therefore, be smoothed out over the month.

The consequence of the reclassification is that the employment contract is deemed to have been concluded for a duration equal to the statutory working time duration as from the day on which the maximum duration was exceeded. The employer is then obliged to pay the salary corresponding to full time work, regardless of the income the employee may have received elsewhere (salaries received by other employers, unemployment benefits, etc.).

To all intents and purposes, it should be reminded that any part-time employee may be required to work



beyond the working hours stipulated in his/her contract. In this case, the employee works overtime up to a limit of 1/10 of the weekly or monthly duration set in the contract. These overtime hours give rise to an 10% increase in salary for each overtime hour worked.

[1] Labor Chamber of the *Cour de Cassation*, September 15, 2021, No. 19-19.563

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